U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: BALTIMORE Date:
BAL 03 210 5005

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim Director for Services, Baltimore, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent passport in connection with his attempted entry into the United States on May 17, 1992, at JFK airport in New York. The applicant was placed into exclusion proceedings, and on March 3, 1994, he was ordered excluded from the United States. The applicant failed to appear for his scheduled removal to Jordan on May 1, 1995, and became an absconder. The applicant subsequently married two citizens of the United States. His first marriage was to Catina Laubach and took place May 13, 1996, in Annapolis, Maryland. The Petition for Alien Relative (Form I-130) filed by his first wife was denied by the district director on May 11, 2000. The district director, in a decision dated April 9, 2001, denied counsel's motion to reopen or reconsider the previously issued decision. Counsel then filed an appeal with the Board of Immigration Appeals (BIA) which issued a decision on October 22, 2002, upholding the district director's decision.

Following the termination of the applicant's first marriage on February 25, 1998, the applicant married his second wife, [redacted] on March 9, 1998, in Baltimore, Maryland. The second wife filed a Form I-130 on behalf of the applicant (EAC 98 163 53190) with the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] on April 3, 1998, and the applicant simultaneously filed an I-485 seeking adjustment of status. Following delays resulting from CIS' confusion over the status of the two I-130s, the second wife's petition was approved on April 4, 2003. Counsel submitted an Application for Waiver of Grounds of Excludability (Form I-601) on the applicant's behalf pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to permit the applicant to remain in the United States with the U.S. citizen spouse and the couple's U.S. citizen child.[1]

The interim district director issued a Notice of Intent to Deny (NOID) on September 16, 2003, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, but providing an opportunity to respond. Counsel submitted a response on October 16, 2003, and following review of that response, the interim district director denied the waiver. *Decision of the Interim District Director*, dated January 14, 2004.

On appeal, counsel states that CIS failed to consider the totality of the evidence in concluding that the applicant failed to establish extreme hardship to his U.S. citizen spouse. *Form I-290B*, submitted February 17, 2004.

The voluminous record reviewed contains numerous documents and exhibits. The principal documents submitted include copies of the marriage certificates for the applicant and his spouses; a copy of documents relating to the divorce proceedings between the applicant and his first wife; the affidavit of support submitted by the applicant's spouse on behalf of the applicant; a copy of the birth certificates of the applicant's spouses;

[1] Although the record contains numerous references to the hardship that will be suffered by the applicant's U.S. citizen child as a result of being separated from her father, the AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

a copy of pages from the fraudulent passport used by the applicant in his attempt to gain admission to the United States; numerous affidavits submitted in connection with the petitions and applications, including the affidavits submitted by the applicant, his spouse, and those of the spouse's family and friends; a copy of the U.S. certified abstracts of birth of the applicant's child; copies of real estate, tax and financial documents for the couple and copies of medical insurance cards issued to the couple and their daughter; and various medical records, and assessments pertaining to the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
>
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on May 17, 1992, the applicant attempted to enter the United States through the use of a fraudulent passport. The applicant was placed in exclusion proceedings and was ultimately ordered

removed to Jordan.[2] The applicant failed to appear for his scheduled removal, but subsequently married his U.S. citizen spouses and sought to remain in the United States as a result of the petitions and applications that have been filed on his behalf.

Counsel contends that the district director erred in concluding that the applicant had failed to demonstrate that the applicant's removal would result in extreme hardship to his U.S. citizen spouse.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel offers an affidavit, as well as the affidavits of his spouse and numerous family members and friends of the couple to support the claim of extreme hardship imposed by the applicant's inadmissibility to the United States. In addition, counsel also offers financial records to demonstrate the allegedly precarious financial situation of the U.S. citizen spouse and her dependence upon the applicant. Finally, the third type of documentation submitted by counsel consists of the medical records and evaluations pertaining to the spouse's medical and psychological conditions for which she has received, and for some conditions still receives, treatment. Each of these areas which counsel claims were not adequately addressed in the district director's evaluation of extreme hardship is discussed in greater detail below.

The Financial Hardship to the Applicant's Spouse

The affidavits submitted by counsel support the contention that the applicant's income is the family's primary financial resource and that his wife is dependent upon his income to meet her expenses and pay the household's substantial debts. The wife's affidavit states that the applicant pays the majority of the family's bills as she makes $12.37 per hour during a 37.5 hour work week. *Affidavit of Jeanette Hussain.* The affidavit further relates the fact that the couple has loan balances of $26,000 and $77,000 respectively on their truck and home, and indicates that the proceeds from the sale of the applicant's pizza business were used to

[2] The record reflects that the applicant applied for, but was denied asylum and withholding of deportation. No appeal of the immigration judge's order was filed, although the applicant asserts that the failure to do so was attributable to his inability to pay his former counsel. *See Affidavit of Applicant dated March 3, 2004.*

pay off outstanding balances on two of their credit cards. *Affidavit of Jeanette Hussain.* As an attachment to her affidavit, the spouse includes an itemized list of the couple's household's monthly expenses, estimated to be at least $4,006.02 and an itemized list of the couple's outstanding account balances, which she estimates total $167,223.06. *Attachment to Affidavit of Jeanette Hussain.* The affidavit submitted by the applicant simply states that his wife would be unable to survive financially without his assistance as her monthly bills exceed her income, and asserts that he is concerned about losing the house and other things they have obtained. *Affidavit of Nasir Hussain.*

In addition to the affidavits, counsel has submitted copies of numerous bills, the majority of which are in the name of the applicant's wife alone, as well as copies of checks written by the applicant on the couple's joint account, presumably reflecting payments on those accounts by the applicant. Counsel also submitted various tax records and income statements for the couple, including copies of the applicant's 2003 W-2 Wage and Tax Statement relating to his work at his business establishment, Today's Pizza, which reflected wages of $6,400, and Form 1099-Misc., reflecting non-wage compensation of $29,800 for 2003.[3] The spouse's W-2 form for 2003 reflected wages of $20,466.85 as an employee of Baltimore County Savings.

The Hardship to the Applicant's Spouse Relating to her Medical Condition

The second principal ground raised by counsel as evidence of the extreme hardship that will result to the applicant's spouse relates to the spouse's medical problems. Counsel has submitted documents that recount various physical and psychological maladies that the spouse has experienced over the last several years. A substantial number of the documents relate to the spouse's efforts to become pregnant and her resulting pregnancy and delivery following successful infertility treatment. A second set of medical records relate to the citizen spouse's treatment for gallbladder problems, resulting in surgery to remove her gall bladder. Various other documents reference the citizen spouse's treatment for a variety of other medical conditions such as fibroids, osteoarthritis, allergies and sinusitis, reflux esophagitis all of which appear to be conditions for which she is receiving ongoing medical treatment.

In addition to these medical conditions, the bulk of the remaining documentation relates to the spouse's psychological condition. The citizen spouse's longstanding physician has treated her for a variety of psychological conditions, including post partum depression following the birth of her child, and a history of panic attacks. *See Letter from Irene F. Ibarra, M.D. P.A.,* dated April 29, 2003. The record reflects that the applicant's spouse has received various medications for her psychological difficulties and currently appears to be stable. The letter from her physician indicates that her husband has "been the sole provider for her medical, emotional and financial support." *Id.*

In addition to the letter from the citizen spouse's primary physician, the record also contains two additional letters referring to the citizen spouse's psychological condition and the effect of the applicant's possible departure. The first letter is from a doctor named [redacted] The letter from Dr. Haque, whose area of specialization is not specified in the letter or the letterhead, indicates that he examined Mrs. Hussain on July 25, 2003, and based on that examination concluded that she suffers from "unipolar depression, anxiety disorder and at times...relapses of panic attack disorder." *See Letter from Syed W. Haque*

[3] The record reflects that the applicant owned a one-third interest in Today's Pizza which was later sold. *See Affidavit of Jeanette Hussain.*

M.D., PA, dated July 25, 2003. The doctor attributes her condition to "the social economic situation" she is in, as well as her "morbid obesity which, in [his] opinion is also a contributing factor to her depression." The principal conclusion of the letter appears to be that she would receive inferior treatment of her condition in Pakistan, although the medications themselves would likely be available. The writer bases his opinion on his experience as a physician while treating similar patients during his training in Pakistan. *Id.* No additional information regarding the time periods during which his training occurred or other information on which he bases his opinion is provided.

The third medical evaluation offered is a letter from [redacted] Ph.D., DABFE. His letter indicates that he examined the applicant's spouse on May 13, 2003, after having been referred by her attorney for an evaluation to assess the impact upon her of her husband's possible deportation from the United States. The evaluation concludes that she is prone to anxiety and depression, and has a history of treatment for these conditions. It recommends that the applicant's spouse continue to take her medication as prescribed by her physician, and consider psychotherapy. The evaluation states that the applicant's spouse is concerned about negative effects upon her daughter and herself in the event of the applicant's removal from the United States, including the possible loss of her home and other financial effects. [redacted] provides his opinion that her condition will deteriorate without the emotional and financial support of her husband. The doctor predicts adverse effects upon the couple's daughter and overall concludes that the applicant provides a stabilizing and beneficial influence necessary for the continued functioning of the family given the citizen spouse's psychological issues. *See Evaluation of Steven C. Zimmerman, Ph.D, DABFE, dated May 13, 2003.*

The Hardship to the U.S. Citizen Spouse Resulting from Relocating to Pakistan.

On the issue of the ability of the applicant's wife to relocate to Pakistan, aside from the statements contained in letter from [redacted] the affidavit [redacted] states that if the family were to relocate to Pakistan, their "lives would drastically change." *Affidavit of Jeanette Hussain.* The primary concerns expressed in her affidavit relate to the change in the family's standard of living and the inability to afford extra medical expenses. She expresses concern about her inability to understand the language and the scarcity of jobs for women. She is also concerned about the emotional impact a separation from the applicant would have upon her family. If she remains in the United States she is concerned that she would likely have to receive government assistance. *Id.*

In response to the NOID, counsel submitted documentation regarding the human rights situation in Pakistan with regard to individuals who suffer religious persecution, the contention being that the applicant's wife and child would "most likely be persecuted, tortured, raped, and killed because they are women, they are Catholic, and they are American citizens." *See Counsel's Rebuttal to the Service's Notice of Intent to Deny I-601 dated October 16, 2003.* In support of the rebuttal, the citizen spouse submitted another affidavit in which she asserted for the first time that she would not be safe in Pakistan due to her Christian religion, relying upon an affidavit submitted by a cousin of the petitioner who previously lived in Pakistan and had allegedly warned her of the dangers she and her daughter would experience in Pakistan. The applicant also submitted an affidavit in response to the NOID indicating that he fears harm to his wife and daughter especially due to their Catholic religion, and predicts his wife and daughter would be in grave danger on account of their Catholic faith. *See Applicant's Affidavit dated October 12, 2003.*

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

While the record reflects that the applicant's spouse has experienced adverse medical and mental health conditions, it appears that many of those conditions have been resolved, or have been stabilized through medical intervention in the form of medication and/or counseling. Furthermore, while the spouse's medical professionals indicate that the spouse's presence is a stabilizing factor, we note that notwithstanding the spouse's presence in the United States, the citizen spouse has experienced medical problems including the panic attacks and anxiety. Moreover, the psychological evaluation indicated that notwithstanding the assistance rendered by her husband that the applicant's wife would be strongly advised to continue her medication regimen and consider psychotherapy. *See Letter from Dr. Steven C. Zimmerman, Ph.D, DABFE, dated May 13, 2003.*

We note that the record reflects that the applicant's spouse has a wide network of family and friends who have rallied behind the couple to support the applicant's effort to remain in the United States. As indicated by the numerous affidavits, the applicant's spouse enjoys a very close relationship with her family and friends.[4] Should she elect to remain with her daughter in the United States, they no doubt would provide her with emotional support, which, while different from that which her spouse could provide, would nonetheless be important for her adjustment to her husband's departure.

The applicant and U.S. citizen spouse's concerns with respect to her financial situation, while not insignificant, are nonetheless within the scope of ordinary hardships to be expected in a situation involving separation and does not constitute extreme hardship. It is obvious, from a review of the record, that the family unit has been accumulating significant credit card debt. However, it is also clear that the applicant's spouse possesses skills that have enabled her to be gainfully employed in positions that pay a regular salary and provide healthcare for her family. It is also reasonable to believe that the applicant could continue to support his wife and daughter even though he will be compensated at reduced rates due to the different standard of living in Pakistan, which the applicant estimates to be approximately $200 per month. *See Affidavit of Applicant in Support of I-601,* (undated). However, during his time in the United States, the

[4] In fact, we note that evidence in the record indicates that the applicant's spouse may, in fact, reside with her family members. The deed contained in the record reflects that the applicant and his U.S. citizen spouse are listed on the deed as the owners of the property located at 6819 Duluth Ave., which was purchased on October 30, 1998 and which both the applicant and his spouse have listed as their residence. *See Form I-485; Form I-601.* The record further contains a document prepared by the applicant's spouse and titled, Table of Relatives" containing detailed information regarding the spouse's relatives in the United States. That document indicates that several of the spouse's relatives reside at the 6819 Duluth Avenue address, including her mother, father, sister, and cousin.

applicant has been capable of gaining employment and even sustaining a business in which he maintained a one-third ownership. Consequently, it is presumed that those skills will enable him to be gainfully employed after he departs the United States and is in a position to contribute to the maintenance of his family in the United States. The record reflects that the applicant's wife fears that she will be unable to maintain the payments on the family home and vehicle. The district director's decision of January 14, 2004, noted that this assertion had previously been made but was unsupported by evidence addressing what outstanding balances, if any, remained. Counsel's submissions on appeal include documents reflecting that the outstanding balances on those assets were $26,381.26 on the truck, and approximately $77,306.64 on the house mortgage. However, notwithstanding these financial obligations, we find that the possible loss of these assets does not constitute extreme hardship.[5]

Finally, we turn to the claim of extreme hardship should the U.S. citizen spouse decide to relocate to Pakistan with the applicant. The claim of extreme hardship relates primarily to the spouse's inability to receive more than basic medical care, and to the persecution to which she would be subjected as a devout Catholic living in Muslim country. At the outset, we do not believe that sufficient evidence has been submitted regarding the inability of the applicant's spouse to receive adequate medical treatment for her medical conditions.[6] However, we acknowledge that relocating to a country such as Pakistan would undoubtedly be disruptive for the applicant's spouse, and more importantly poses a significant risk of harm to the applicant's wife as evidenced by counsel's submissions and a Department of State Travel Warning for Pakistan issued on January 29, 2004. *See Travel Warning for Pakistan,* U.S. Department of State (January 29, 2004). That travel warning notes the widespread danger to U.S. citizens living in Pakistan which resulted in a March 2002 order, still in effect, directing the family of members of U.S. officials assigned to Pakistan to leave the country. Nevertheless, we note that the applicant's spouse is free to eliminate any potential danger by choosing to remain in the United States. Accordingly, we find that counsel's submissions fail to demonstrate that the applicant's spouse would suffer extreme hardship on this basis because of the option available to her of remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[5] The AAO also notes that the record reflects that the U.S. citizen spouse submitted an affidavit of support on behalf of the applicant expressing, under penalty of perjury, her intention and ability to financially support the applicant. *See Affidavit of Support Under Section 213A of the Act (Form I-864), submitted May 14, 1998.*

[6] With respect to the affect of a move to Pakistan on the spouse's medical condition, the affidavit from Dr. Haque itself noted that medication to treat her mental health ailments would likely be available. *See Letter from Dr. Haque dated July 25, 2003.* As for his assertion that the medical care system would be ill equipped to address her situation, we find that to be speculative and unsupported by any objective evidence other than Dr. Haque's opinion based upon his own personal experience the details of which are unknown.